

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

**FILED**

January 18, 2024

KAREN MITCHELL  
CLERK, U.S. DISTRICT  
COURT

DANIEL D. DILLARD, §  
Plaintiff, §

v. § Civil Action No. 7:19-cv-81-M

§ Case No. 22-10791

LORIE DAVIS, et al., §  
defendants. §

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PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING  
ORDER

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Pursuant to Federal Rule of Civil Procedures 65(b), Plaintiff moves this Court for a Temporary Restraining Order and Preliminary Injunction for the reasons set forth below.

1. Plaintiff has a great likelihood of success on the merits because Prison Officials (defendants') have a legal duty to refrain from using excessive ~~for~~ force and to provide adequate safety. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Hudson v. McMillian*, 503 U.S. 1 (1992); *Wilkins v. Gaddy*, 559 U.S. 34 (2010).

2. There is a substantial threat of irreparable harm if the TRO/injunction is not granted. see Attached Memorandum of Law and Declaration.

3. Plaintiff is enduring continuous and repeated retaliatory acts from defendants' and/or their agents. The defendants' will suffer NO harm/injury from putting a stop to these retaliatory acts. see Memorandum of Law.

4. It is always in the Public interest for governmental officials, including Prison Personnel, to obey the Constitution and the law. Protection of Constitutional rights is a compelling public interest.

WHEREFORE, Plaintiff requests that upon consideration of this motion, this court order defendants', their successors, agents, employees and all persons acting in concert with them to provide Dillard with medical

evaluation for his left eye and provide an up-to-date treatment plan, provide Plaintiff with adequate safety from defendants' agents (Sergeants Oluyemi Akinode, Daniel B. Manyango, Obadina S. Omoaka, Jonnie D. Rutledge, Lieutenant Daniel A. Lakin and Captain Erik L. Brannan), provide Dillard with a basis/justification for continuing his current housing, replacing Dillard's typewriter used for this litigation, and release Plaintiff to General Population status 2 pending the outcome of this litigation.

January 11<sup>th</sup>, 2024

Respectfully submitted,

x Daniel D. Dillard

Pro Se Plaintiff-Appellee

Daniel D. Dillard #01400285

Mark W. Michael Prison

2664 F.M. 2054

Tennessee Colony, Texas 75886

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MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING  
ORDER

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Statement of the Case

This is a civil rights action brought under 42 U.S.C.  
§ 1983 by a Texas prisoner who has been subjected  
to continuous and repeated retaliatory acts by  
the defendants and/or successors, agents and  
employees and who is presently being denied  
appropriate medical care and safety. The Plaintiff  
seeks a temporary restraining order and preliminary

insunction to ensure that he received proper medical care and adezuate safety.

### Statement of Facts

As stated in the declaration submitted with this motion, the Plaintiff was assaulted by prison staff in retaliation to his most recent administrative grievance activities. (Dec. at §§ ). During the assault, Plaintiffs' left eye was gouged, his genitals were manhandled, and he was punched/kicked repeatedly while he was on floor unresistent. (Dec. at §§ ). The defendants' agents refused Plaintiff immediate medical for his eye, this denial resulted in a signifizant degrade in his vision. (Dec. at §§ ). The defendants' did not provide him with treatment or with a consultation with a physican qualified to assess and treat his conditions (Dec. §§ ). Plaintiff is experiëncing continued pain, stiffness, and severely limited sight in his left eye

and cannot see properly. (Dec. at §§ ). The defendants' and/or their agents have a legal duty to refrain from using excessive force. (Dec. at §§ ). The defendants' agents have already informed Plaintiff that this is NOT a grievable issue. (Dec. at §§ ). Plaintiff has NO adequate remedy.

### ARGUMENT

#### Point 1

#### THE PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

In determining whether a party is entitled to a temporary restraining order or a preliminary injunction, courts generally consider several factors: whether the party will suffer irreparable injury, the "balance of hardships" between the parties, the likelihood of success on the merits, and public interest. Each of these factors favor the grant of this motion.

#### A. The Plaintiff is Threatened with Irreparable Harm

The Plaintiff alleges that he has been denied care for a serious medical need contrary to TDCJ's Use of Force Plan and is currently being housed arbitrarily under deplorable conditions. Such conduct by prison officials is a clear violation of the Eighth and Fourteenth Amendments. *Estelle v. Gamble*, 429 U.S. 97, 105 (1976); *Hudson v. McMillian*, 503 U.S. 1 (1992).

"Excessive Force" by prison guards is cruel and unusual punishment. "Excessive Force" is any physical contact by a guard that is meant to cause harm rather than keep order. *Brown v. Lippard*, 472 F.3d 384 (5<sup>th</sup> Cir. 2006). Plaintiff was sexually assaulted, a guard on the team shoved his finger into the Plaintiff's anus outside the context of an approved body cavity search.

These retaliatory acts have been repeated over 5 and 1/2 (five and one half) years. As a matter of law, the continuing deprivation of constitutional rights constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347,

373 (1976); Calhoun v. Hargone, 312 F.3d 780 (5<sup>th</sup> Cir. 2002).

Harm is irreparable "if it cannot be undone through monetary remedies." Dennis Melancon Inc. v. City of New Orleans, 703 F.3d 262, 279 (5<sup>th</sup> Cir. 2012). The significant degrade in Plaintiffs' vision cannot be undone by monetary remedies. The "Elrod v. Burns" principle has been applied in prison litigation. Turner v. Collier, 2022 U.S. Dist. LEXIS 179663

In addition, the Plaintiff is threatened with irreparable harm because of the nature of his injury, a gouged eye with a significant degrade in his vision and function, and continuous retaliatory acts to impede the instant litigation. If he does not receive proper treatment and adequate safety, he may never regain his vision and more than likely will suffer further intimidation in connection with this litigation.

B. The Balance of Hardships Favors Plaintiff.



In deciding whether to grant TRD's and preliminary injunctions, courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non-moving party if the motion is granted. see e.g., *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2<sup>nd</sup> Cir. 1984); *Mi Familia Vota v. Abbott*, 497 F. Supp.3d 195 (5<sup>th</sup> Cir. 2020); *Tex. Democratic Party v. Abbott*, 461 F. Supp. 3d 406 (5<sup>th</sup> Cir. 2020); *Murillo v. Musegades*, 809 F. Supp. 481 (5<sup>th</sup> Cir. 1992).

In this case, the present suffering of the Plaintiff and his potential suffering if he permanently loses the normal use of his left eye and sight are enormous.

The "sufferings" the defendants' will experience if the court grants the order will consist of taking the Plaintiff to the Prisons medical department and providing adequate safety and release to general population — something that the defendants' do, and

are obligated to do, for members of the prison population on a daily basis. The defendants' hardship amounts to no more than business as usual.

C. The Plaintiff is Likely to Succeed on the Merits.

The Plaintiff has a great likelihood of success on the merits. Since October 8<sup>th</sup>, 2018 defendants' and/or their agents have trampled upon Plaintiffs' First, Eighth and Fourteenth Amendment rights. Most recently on November 9<sup>th</sup>, 2023, the defendants' agents severely escalated their retaliatory acts to a full blown unprovoked attack on the Plaintiffs' person. The assault resulted in the Plaintiffs' eye being gouged and a significant degrade in his vision, one of the assaultant sexually assaulted Dillard by sticking their finger in his anal cavity and squeezing his genitals. Since the assault Dillard has been denied medical attention for injuries. On the same day, defendants' destroyed Plaintiff

typewriter that Plaintiff was using for this litigation.

Plaintiff has requested to consult the medical

department but was denied. (see Exhibits in Declaration).

In a very important Supreme Court case called Hudson v.

McMillian, 503 U.S. 1 (1992), the Court found a violation

of the Eighth Amendment when prison officials punched

and kicked a prisoner, leaving him with minor bruises,

swelling of his face and mouth, and loose teeth. Wilkins

v. Gaddy, 559 U.S. 34 (2010); Jones v. TDCJ, 880 F.3d 756

(5<sup>th</sup> Cir. 2018). In doing so, defendants have acted with

deliberate indifference to substantial risks of serious

harm; in violation of Plaintiffs' rights under the

Eighth Amendment. Taking the Plaintiffs' allegations

as true, he has shown a sufficient likelihood of

success on the merits.

#### D. The Relief Sought Will Serve the Public Interest.

The public interest will not be disserved by a grant of

this motion. To the contrary, the public interest will be well served by protecting the constitutional rights of all its citizens.

### CONCLUSION

For the foregoing reasons, the Court should grant the motion in its entirety.

January 11, 2024

Respectfully submitted,

x Daniel D. Dillard

Pro Se Plaintiff-Appellee  
Daniel D. Dillard #01400285  
Mark W. Michael Prison  
2664 F.M. 2054  
Tennessee Colony, Texas 75886

### CERTIFICATE OF SERVICE

I, Daniel D. Dillard, Plaintiff, do hereby declare that a true and correct copy of the foregoing is being placed in the prison mailbox, indigent mail, on January 11, 2024, addressed to:

Christopher Lee Lindsey

Assistant Attorney General  
P.O. Box 12548, Capitol station  
Austin, Texas 78711

X. Daniel D. Dillard  
Pro Se Plaintiff-Appellee  
Daniel D. Dillard #D1400285  
January 11, 2024

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

DANIEL D. DILLARD, §

Plaintiff, §

v. § Civil Action No. 7:19-cv-81-M

§ Case No. 22-10791

LORIE DAVIS, et al., §

defendants. §

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ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING  
ORDER - CIVIL ACTION NO. 7:19-cv-081-M

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Upon the complaint, the supporting declarations of Plaintiff, the supporting declaration of James A. Jackson, the supporting declaration of Riedie J. Jackson, ~~and~~ the supporting Exhibits, and the memorandum of law submitted herewith, it is:

ORDERED that defendant Bobby Lumpkin and/or his agents show cause in room \_\_\_\_\_ of the United States Courthouse, 501 West Tenth St., Room 310, Fort Worth, Texas 75886, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, at \_\_\_\_\_ o'clock, why a temporary restraining order / preliminary injunction

should not issue pursuant to Rule 65 (a) of the Federal Rules of Civil Procedure enjoining the defendants, their successors in office, agents and employees and all other persons acting in concert and participation with them, from housing Daniel D. Dillard #01400285 under the Restrictive Housing Plan and/or TDCJs Michael Prison SOS policy and/or under any of the conditions set out in Plaintiff's complaint or Declaration in Support of this motion.

IT IS FURTHER ORDERED that effective immediately and pending the hearing and determination of this order to show cause, defendant Bobby Lumpkin and Veronica B. Lilly (automatically substituted under Fed. R. Civ. P. 25) and each of their officers, agents, employers, and all persons acting in concert or participation with them, are restrained /enjoined from implementing and enforcing the S.O.S. policy, from housing Dillard in RH pending the disposition

of this case, and from depriving Dillard of his  
personal property specifically his legal work and books.

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United States District Judge

January \_\_\_\_\_, 2023



January 11, 2024

Karen Mitchell  
Office of the Clerk  
United States District Court  
Northern District of Texas  
501 West Tenth st., Room 310  
Fort Worth, Texas 76102

**FILED**  
January 18, 2024  
KAREN MITCHELL  
CLERK, U.S. DISTRICT  
COURT

Re: Dillard v. Davis, civil action No.  
7:19-cv-00081-M  
TRO

Dear Karen Mitchell:

Happy New Year!

Please find enclosed Plaintiff's Motion For A  
TRO/Preliminary Injunction.

Please be advised that there are two  
seperate envelopes because of the size of this  
motion this is 1 of 2. 2 of 2 contains  
Plaintiff's Declaration In Support and the corresponding  
Exhibits (A-J).

Thank you for your attention to this matter.  
God Bless!

Respectfully submitted,  
X Daniel D. Dillard  
Daniel D. Dillard

Sorry about the  
state of these  
documents. All I  
have.

Daniel D. Dillard #01400225  
Mark W. Michael Prison  
2664 F.M. 354  
Tennessee Colony Texas 75886

LEGAL Mail  
Leaail MAIL  
1 of 2

United States District Court  
Office of the Clerk  
Northern District of Texas  
501 West Tenth St., Room 310  
Fort Worth, Texas 76102